

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUMA SE, and PUMA North America Inc.,

Plaintiff,

v.

Brooks Sports, Inc.,

Defendant.

CASE NO. 2:24-cv-00940-JLR

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: non-public information concerning or containing business
4 operations and business plans, research and development, sales and marketing, personal
5 identifying or financial information, a party or non-party’s trade secrets or intellectual property,
6 manufacturing processes or partners, product specifications or plans, distribution processes or
7 partners, technical and development information, or other proprietary or confidential business,
8 commercial, or financial information of commercial value, the disclosure of which is likely to
9 cause competitive harm, or the disclosure of which would contravene an obligation of
10 confidentiality to a third person or to a court (“Third-Party Materials”).

11 “Attorneys’ Eyes Only” material shall include proprietary business, financial, and
12 intellectual property information and trade secrets that are more sensitive or strategic than
13 confidential material, the disclosure of which is likely to cause significant competitive harm.
14 Third-Party Materials are not automatically entitled to “Attorneys’ Eyes Only” protection.
15 However, nothing precludes “Attorney’s Eyes Only” protection for Third-Party Materials if the
16 standard set forth in this paragraph is satisfied.

17 “Outside Counsel Only – Prosecution Bar” material shall include highly sensitive
18 manufacturing information, technical product design information, design, research and
19 development, manufacturing, or technical plans for products in development, and other highly
20 sensitive proprietary technical or trade secret information related to manufacturing or technical
21 product design that is more sensitive or strategic than Attorneys’ Eyes Only material, the
22 inadvertent disclosure of which is likely to cause significant competitive harm. For avoidance of
23 doubt, information that does not relate to manufacturing or technical product design (e.g.,
24 information related to advertising, marketing, or sales figures) for products in development cannot
25 be designated as “Outside Counsel Only – Prosecution Bar.” Furthermore, information that relates
26 exclusively to manufacturing or technical product design for products that have been made

1 available to the public as of the date of the designation of that information under this order cannot
2 be designated as “Outside Counsel Only – Prosecution Bar.” Third-Party Materials are not
3 automatically entitled to “Outside Counsel Only – Prosecution Bar” protection. However, nothing
4 precludes “Outside Counsel Only – Prosecution Bar” protection for Third-Party Materials if the
5 standard set forth in this paragraph is satisfied.

6 3. SCOPE

7 3.1 General. This Order governs the production and handling of any protected
8 information in this action including all hardcopy and electronic materials. Any party or non-party
9 who produces protected information in this action may designate it as “Confidential”; “Attorneys’
10 Eyes Only”; or “Outside Counsel Only - Prosecution Bar” consistent with the terms of this
11 Order. The protections conferred by this Order cover not only “Confidential,” “Attorneys’ Eyes
12 Only, ” and “Outside Counsel Only - Prosecution Bar” material (as defined above), but also (1)
13 any information copied or extracted from “Confidential,” “Attorneys’ Eyes Only, ” or “Outside
14 Counsel Only - Prosecution Bar” material; (2) all copies, excerpts, summaries, or
15 compilations of “Confidential,” “Attorneys’ Eyes Only, ” and “Outside Counsel Only -
16 Prosecution Bar” material; and (3) any testimony, conversations, or presentations by parties or
17 their counsel that might reveal “Confidential,” “Attorneys’ Eyes Only, ” and “Outside Counsel
18 Only - Prosecution Bar” material.

19 However, the protections conferred by this agreement do not cover information that is in
20 the public domain or becomes part of the public domain through trial or otherwise, unless such
21 information is disclosed by the Receiving Party in violation of this Order. Nothing herein shall be
22 construed as an admission or concession by any party that designated “Confidential,” “Attorneys’
23 Eyes Only,” or “Outside Counsel Only - Prosecution Bar” materials, or any document or
24 information derived from those materials, constitutes material, relevant, or admissible evidence in
25 this matter.

26 “Designating Party” means the party or non-party who so designates the protected
information; “Receiving Party” means the party or non-party to whom such information was
produced or disclosed. Whenever possible, the Designating Party must designate only those

1 portions of a document, deposition, transcript, or other material that contain the protected
2 information and refrain from designating entire documents. Regardless of any designations made
3 hereunder, the Designating Party is not otherwise restricted from use or disclosure of its protected
4 information outside of this action. In addition, any party may move to modify or seek other relief
5 from any of the terms of this Order if it has first tried in writing and in good faith to resolve its
6 needs or disputes with the other party(ies) pursuant to the terms of this Order and LCR 37.

7 This Order is binding on all parties, their employees, and their counsel in this proceeding,
8 upon all signatories to Exhibit A, and upon (as applicable) their respective corporate parents,
9 subsidiaries, and affiliates, including their successors, and their respective attorneys, principals,
10 experts, consultants, representatives, directors, officers, and employees.

11 3.2 Application to Third Parties. Third parties who are obligated to produce material
12 in this action and who so elect may avail themselves of, and agree to be bound, by the terms and
13 conditions of this Order by signing the acknowledgement to be bound attached hereto as Exhibit
14 A.

15 Before a third party is given copies of designated information as permitted hereunder, the
16 Designating Party must be notified and be given an opportunity to object. If the Designating Party
17 wishes to lodge an objection, it must do so within 15 days of being notified, and the parties must
18 resolve any such objection before making disclosure of designated information as permitted
19 hereunder to the third party. Otherwise, if the Designating Party does not object within 15 days of
20 being notified, disclosure of designated information as permitted hereunder may be made to the
21 third party. Prior to receiving copies of designated information, the third party must first sign the
22 acknowledgment to be bound to these terms that is attached hereto as Exhibit A; if it fails to do so,
23 the parties to this action must resolve any such dispute before making disclosure of designated
24 information as permitted hereunder to the third party. For avoidance of confusion, this paragraph
25 does not apply to the parties' experts, consultants, or employees.

26 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

1 4.1 Basic Principles. Information that is produced or exchanged in the course of this
2 action and designated under this Order may be used solely for the preparation, trial, and any appeal
3 of this action, as well as related settlement negotiations, and for no other purpose, including
4 business, marketing, research and development, competitive or other non-litigation purposes,
5 prosecution, drafting, or editing of any new or existing patent applications or claims, or in any
6 other litigation proceeding, without the written consent of the Designating Party. No designated
7 information may be disclosed to any person except in accordance with the terms of this Order.
8 This Order shall not bar any counsel from rendering legal advice to such attorney's client in this
9 action that is based in part on the attorney's analysis or evaluation of materials designated as
10 "Confidential," "Attorneys' Eyes Only," or "Outside Counsel Only - Prosecution Bar" that are
11 produced, exchanged, or provided in this action, provided, however, that in rendering such
12 advice and otherwise communicating with their client, the attorney shall not disclose the
13 substance of any materials designated under this agreement contrary to the terms of this Order.

14 All persons in possession of designated information agree to exercise reasonable care with
15 regard to the custody, use, or storage of such information to ensure that its confidentiality is
16 maintained. This obligation includes, but is not limited to, the Receiving Party providing to the
17 Designating Party prompt notice of the receipt of any subpoena that seeks production or disclosure
18 of any designated information and consulting with the Designating Party before responding to the
19 subpoena, pursuant to Section VII of this Order. Any use or disclosure of Confidential, Attorneys'
20 Eyes Only, or Outside Counsel Only - Prosecution Bar information in violation of the terms of this
21 Order may subject the disclosing person or party to sanctions.

22 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
23 by the court or permitted in writing by the designating party, a receiving party may disclose any
24 "Confidential" material only to:

25 (a) the receiving party's counsel of record in this action, as well as employees
26 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

1 (b) the officers, directors, and employees of the receiving party to whom
2 disclosure is reasonably necessary for this litigation;

3 (c) the receiving party's in-house counsel and their legal support staff;

4 (d) experts and consultants to whom disclosure is reasonably necessary for this
5 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

6 (e) the court, court personnel, and court reporters and their staff;

7 (f) copy or imaging services retained by counsel to assist in the duplication of
8 confidential material, provided that counsel for the party retaining the copy or imaging service
9 instructs the service not to disclose any confidential material to third parties and to immediately
10 return all originals and copies of any confidential material;

11 (g) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
13 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
14 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
15 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
16 under this agreement;

17 (h) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information.

19 4.3 Disclosure of "ATTORNEYS' EYES ONLY" Information. Unless otherwise
20 ordered by the court or permitted in writing by the designating party, a receiving party may disclose
21 any "Attorneys' Eyes Only" material only to:

22 (a) the receiving party's counsel of record in this action, as well as employees
23 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

24 (b) two members of the receiving party's in-house counsel team, so long as
25 each designated member signs the acknowledgement to be bound attached hereto as Exhibit A;

26 (c) experts and consultants employed by the parties or their counsel for

1 purposes of this action to whom disclosure is reasonably necessary for this litigation and who have
 2 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court, court personnel, and court reporters and their staff;

4 (e) copy or imaging services retained by counsel to assist in the duplication of
 5 confidential material, provided that counsel for the party retaining the copy or imaging service
 6 instructs the service not to disclose any confidential material to third parties and to immediately
 7 return all originals and copies of any confidential material;

8 (f) during their depositions, witnesses in the action to whom disclosure is
 9 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
 10 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
 11 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
 12 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
 13 under this agreement;

14 (g) the author or recipient of a document containing the information or a
 15 custodian or other person who otherwise possessed or knew the information.

16 To the extent necessary for any discussions between the parties’ business principals, the
 17 parties shall work in good faith to re-designate certain “Attorneys’ Eyes Only” information as
 18 “Confidential.”

19 4.4 Disclosure of “OUTSIDE COUNSEL ONLY – PROSECUTION BAR”
 20 Information. Unless otherwise ordered by the court or permitted in writing by the designating
 21 party, a receiving party may disclose any “Outside Counsel Only - Prosecution Bar” material only
 22 to:

23 (a) the receiving party’s outside counsel of record in this action, as well as
 24 employees of outside counsel to whom it is reasonably necessary to disclose the information for
 25 this litigation;

26 (b) experts and consultants employed by the parties or counsel for purposes of
 this action to whom disclosure is reasonably necessary for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (c) the court, court personnel, and court reporters and their staff;

3 (d) copy or imaging services retained by counsel to assist in the duplication of
4 confidential material, provided that counsel for the party retaining the copy or imaging service
5 instructs the service not to disclose any confidential material to third parties and to immediately
6 return all originals and copies of any confidential material;

7 (e) during their depositions, witnesses in the action to whom disclosure is
8 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
9 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
10 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
11 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
12 under this agreement;

13 (f) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information.

15 To the extent necessary for any discussions between the parties’ business principals and/or
16 in-house counsel, the parties shall work in good faith to re-designate certain “Outside Counsel
17 Only - Prosecution Bar” information as “Attorneys’ Eyes Only,” or as “Confidential.”

18 4.5 Further Requirements with Respect to Disclosure of Confidential Information. Any
19 person who has access to OUTSIDE COUNSEL ONLY – PROSECUTION BAR information may
20 not, commencing on the date they first obtain access to such information and continuing for one
21 year following final termination of this litigation, including all appeals, work on or participate in,
22 directly or indirectly, drafting or editing of any claims of an issued or unissued patent or patent
23 application related to a patent asserted at any time after the date of this Order against a party in
24 this litigation, provided, however, that such a person may provide legal advice concerning the
25 drafting or editing of a claim of an issued or unissued patent if (a) such claim is asserted only
26 against a product that is publicly available at the time of the advice, and (b) the legal advice is

1 derived entirely from publicly-available information. For clarity, nothing herein shall preclude any
2 person who qualifies for access to confidential material under Sections 4.4 (a), (b), or (e) from
3 performing work on any post-grant proceedings before the Patent Trial and Appeal Board or ex
4 parte reexamination proceedings before the Patent and Trademark Office, or any pre- or post-grant
5 opposition proceeding or invalidation request proceedings before a foreign patent office or court.
6 Also for clarity, a person who does not have access to OUTSIDE COUNSEL ONLY –
7 PROSECUTION BAR information (i.e., who does not have access to a database where OUTSIDE
8 COUNSEL ONLY – PROSECUTION BAR information is stored, does not receive electronic or
9 hard copies of OUTSIDE COUNSEL ONLY – PROSECUTION BAR information, and does not
10 receive OUTSIDE COUNSEL ONLY – PROSECUTION BAR information verbally) will not be
11 subject to the restrictions of this paragraph.

12 4.6 Filing Confidential Material. Before filing confidential material or discussing or
13 referencing such material in court filings, the filing party shall confer with the designating party,
14 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
15 remove the confidential designation, whether the document can be redacted, or whether a motion
16 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
17 designating party must identify the basis for sealing the specific confidential information at issue,
18 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
19 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
20 the standards that will be applied when a party seeks permission from the court to file material
21 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
22 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
23 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
24 the strong presumption of public access to the Court's files.

25 4.7 Review of Witness Acknowledgments. At any time and for any purpose, including
26 to monitor compliance with the terms hereof, any Designating Party may demand to review all

1 copies of Exhibit A in any Receiving Party's possession. The Receiving Party must, within 3
2 business days of the demand, provide all such copies to the Designating Party making the demand.
3 Notwithstanding the foregoing, if the Receiving Party has retained an expert whose identity has
4 not yet been disclosed to the Designating Party, the Receiving Party may generically identify how
5 many acknowledgments that it has in its possession attributable to non-disclosed experts, whose
6 acknowledgements must later be provided contemporaneously with any reports issued by one or
7 more of said experts. If a Receiving Party is not required to disclose the identity of any consulting
8 experts, it may not be compelled to produce any acknowledgments from those experts to the
9 Designating Party. However, if the Designating Party provides to the Court evidence of breach of
10 this Order via unauthorized leak of designated information, the Court may require an in camera
11 production of all acknowledgments held by a Receiving Party in order to determine breach and
12 consider enforcement of this Order.

13 4.8 Non-Waiver Effect of Designations. Neither the taking of, nor the failure to take,
14 any action to enforce the provisions of this Order, nor the failure to object to any designation, will
15 constitute a waiver of any party's claim or defense in this action or any other action or proceeding,
16 including but not limited to a claim or defense that any designated information is or is not
17 confidential, is or is not entitled to particular protection, or embodies or does not embody
18 information protectable by law.

19 4.9 In-Court Use of Protected Material. If information designated pursuant to this Order
20 will or may be offered in evidence at a hearing or trial, then the offering party is responsible for
21 making the Court and the Designating Party aware that it is offering designated information into
22 evidence.

23 Nothing in this Order shall be construed as a waiver by a party of any objections that may
24 be raised as to the admissibility at trial of any evidentiary materials.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party

1 or non-party that designates information or items for protection under this agreement must take
2 care to limit any such designation to specific material that qualifies under the appropriate
3 standards. The designating party must designate for protection only those parts of material,
4 documents, items, or oral or written communications that qualify, so that other portions of the
5 material, documents, items, or communications for which protection is not warranted are not swept
6 unjustifiably within the ambit of this agreement.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
8 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
9 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
10 and burdens on other parties) expose the designating party to sanctions.

11 If it comes to a designating party's attention that information or items that it designated for
12 protection do not qualify for protection, the designating party must promptly notify all other parties
13 that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this
15 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
16 ordered, disclosure or discovery material that qualifies for protection under this agreement must
17 be clearly so designated before or when the material is disclosed or produced.

18 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
19 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
20 the designating party must affix the words "CONFIDENTIAL," "ATTORNEYS' EYES ONLY,"
21 or "OUTSIDE COUNSEL ONLY - PROSECUTION BAR" to each page that contains
22 protectable material, with the exception of documents produced in native format, for which the
23 designating party must affix the words "CONFIDENTIAL," "ATTORNEYS' EYES ONLY," or
24 "OUTSIDE COUNSEL ONLY - PROSECUTION BAR" to a covering slipsheet and/or
25 rename the native document to include the confidentiality designation. If only a portion or
26 portions of the material on a page qualifies for protection, the producing party also must clearly
identify the protected portion(s) (*e.g.*, by making appropriate

1 markings in the margins).

2 (b) Testimony given in deposition or in other pretrial proceedings: the parties
3 and any participating non-parties must identify on the record, during the deposition or other pretrial
4 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
5 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
6 transcript of the deposition or other pretrial proceeding, designate in writing which portions of the
7 transcript, or exhibits thereto, are confidential. If a party or non-party desires to protect confidential
8 information at trial, the issue should be addressed during the pre-trial conference.

9 (c) Other tangible items: the producing party must affix in a prominent place
10 on the exterior of the container or containers in which the information or item is stored the words
11 “CONFIDENTIAL,” ATTORNEYS’ EYES ONLY, or “OUTSIDE COUNSEL ONLY -
12 PROSECUTION BAR.” If only a portion or portions of the information or item warrant
13 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
15 designate qualified information or items does not, standing alone, waive the designating party’s
16 right to secure protection under this agreement for such material. Upon timely correction of a
17 designation, the receiving party must make reasonable efforts to ensure that the material is treated
18 in accordance with the provisions of this agreement.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
21 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
23 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
24 challenge a confidentiality designation by electing not to mount a challenge promptly after the
25 original designation is disclosed. Unless and until the challenge is resolved by the parties or ruled
26 upon by the Court, the designated information will remain protected under this Order. The failure

1 of any receiving party to challenge a designation does not constitute a concession that the
2 designation is proper or an admission that the designated information is otherwise competent,
3 relevant, or material.

4 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
5 regarding confidential designations without court involvement. Any motion regarding confidential
6 designations or for a protective order must include a certification, in the motion or in a declaration
7 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
8 affected parties in an effort to resolve the dispute without court action. The certification must list
9 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
10 to-face meeting or a telephone conference.

11 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
12 intervention, the designating party may file and serve a motion to retain confidentiality under Local
13 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
14 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
15 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
16 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
17 the material in question as confidential until the court rules on the challenge.

18 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
19 LITIGATION

20 If a party is served with a subpoena or a court order issued in other litigation that compels
21 disclosure of any information or items designated in this action as “CONFIDENTIAL,”
22 “ATTORNEYS’ EYES ONLY,” or “OUTSIDE COUNSEL ONLY - PROSECUTION BAR,” that
23 party must:

24 (a) promptly notify the designating party in writing and include a copy of the
25 subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to
issue in the other litigation that some or all of the material covered by the subpoena or order is

1 subject to this agreement. Such notification shall include a copy of this agreement; and

2 (c) cooperate with respect to all reasonable procedures sought to be pursued by
3 the designating party whose confidential material may be affected.

4 Upon receipt of notice, the Designating Party may, in its sole discretion and at its own cost,
5 move to quash or limit the subpoena or court order, otherwise oppose the disclosure of the
6 “Confidential,” “Attorneys’ Eyes Only,” or “Outside Counsel Only - Prosecution Bar” material, to
7 the fullest extent available under law, by the person or entity issuing the subpoena or order. The
8 party who received the subpoena or court order shall not oppose or otherwise interfere with the
9 Designating Party’s effort to quash, or limit the subpoena or order.

10 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
12 material to any person or in any circumstance not authorized under this agreement, the receiving
13 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
14 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
15 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
16 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
17 Bound” that is attached hereto as Exhibit A.

18 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
19 MATERIAL

20 9.1 Failure to Make Designation. If, at any time, a party or non-party discovers that it
21 produced or disclosed protected information without designation, it may promptly notify the
22 Receiving Party and identify with particularity the information to be designated and the level of
23 designation (the claw-back notification). The Receiving Party may then request substitute
24 production of the newly-designated information. Within 30 days of receiving the claw-back
25 notification, the Receiving Party must (1) certify to the Designating Party it has appropriately
26 marked or, if substitute production has been requested, destroyed all unmarked copies that it

1 received, made, and/or distributed; and (2) if it was practicably unable to mark or destroy any
2 information because disclosures occurred while the Receiving Party was under no duty of
3 confidentiality under the terms of this Order regarding that information, the Receiving Party must
4 reasonably provide as much information as practicable to aid the Designating Party in protecting
5 the information, consistently with the Receiving Party's attorney-client, work-product, and/or
6 trial-preparation privileges.

7 9.2 Inadvertent Production of Privileged Information. If, at any time, a party discovers
8 that it produced information that it reasonably believes is subject to protection under the
9 attorney/client, work-product, or trial-preparation privileges, then it must promptly notify each
10 Receiving Party of the claim for protection, the basis for it, amend its privilege log accordingly,
11 and comply with Fed. R. Civ. P. 26(b)(5). When a producing party gives notice to receiving parties
12 that certain inadvertently produced material is subject to a claim of privilege or other protection,
13 the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure
14 26(b)(5)(B). Whenever practicable, the producing party must produce substitute information that
15 redacts the information subject to the claimed protection. The parties agree to the entry of a non-
16 waiver order under Fed. R. Evid. 502(d) as set forth herein. The parties must also comply with
17 LCR 37 before seeking Court intervention to resolve any related dispute.

18 10. TERMINATION AND RETURN OF DOCUMENTS

19 Within 60 days after the termination of this action, including all appeals or the expiration
20 of the deadlines for appeal, each receiving party must return or destroy all confidential material to
21 the producing party at the request of the producing party, including all copies, extracts and
22 summaries thereof and certify that all designated information has been returned or destroyed.

23 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
24 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
25 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
26 product, even if such materials contain confidential material.

1 The confidentiality obligations imposed by this agreement survive the conclusion of this
2 action and shall remain in effect until a designating party agrees otherwise in writing or a court
3 orders otherwise.

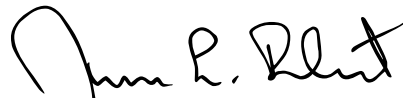
4 11. REQUESTS TO SEAL

5 This protective order does not authorize a party to file or maintain a document under seal. Any
6 party that seeks to file any document, or any portion of a document, under seal, and any party that
7 opposes its maintenance under seal, must comply with LCR 5(g).
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PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

DATED: December 27, 2024



James L. Robart
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of _____ **[insert formal name of the case and the number and initials
assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____